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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/785,018

02/25/2004

Robert Kenneth Nock

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06/23/2005

BURNS DOANE SWECKER & MATHIS L L P
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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,018

Applicant(s)

NOCK, ROBERT KENNETH

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-10 is/are rejected.
7) ☒ Claim(s) 11 and 12 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,881,491 to Brown.

Regarding Claim 1, Brown teaches a perch assembly for removable attachment to a bird feeder, said assembly comprising a locating member (Brown the portion of the hinge #28 that is attached to the #12) for locating and removably engaging a body of the bird feeder (Brown the hinge is capable of being removed since hinges are capable of being attached with screws), a perch (Brown #34) and pivoting means (Brown the shaft that is in the hinge), for allowing the perch to pivot relative to said locating member, such that in use said locating member may engage a bird feeder body (Brown #22) and when so engaged said perch may pivot, from a retracted position in which said perch is substantially flush with said bird feeder body, to an extended position in which said perch projects outwardly from said bird feeder body such that a bird may rest upon said perch (Brown Fig. 4).

Regarding Claim 2, Brown teaches the perch pivots about an axis that, in use, is either substantially parallel to or tangential to the outer surface of said bird feeder body (Brown Fig. 4 arrow).

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Regarding Claim 3, Brown teaches the pivoting means comprises a recess in said locating member and an engaging shaft attached to or integral with said perch (Brown #28).

Regarding Claim 5, Brown teaches in moving from retracted position to extended position said perch pivots through angle of at least 80 degrees (Keefe Fig. 2 #29).

Regarding Claim 10, Brown as modified teaches the pivoting means comprises a plurality of recesses in said locating member (Brown apertures that receive the shaft of the hinge).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,223,637 to Keefe.

Regarding Claim 1, Keefe teaches a perch assembly for removable attachment to a bird feeder, said assembly comprising a locating member (Keefe #26 and 34) for locating and removably engaging a body of the bird feeder (Keefe element #34 is the locating member), a perch (Keefe #36) and pivoting means (Keefe #32), for allowing the perch to pivot relative to said locating member, such that in use said locating member may engage a bird feeder body (Keefe #13) and when so engaged said perch may pivot, from a retracted position in which said perch is substantially flush with said bird

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feeder body, to an extended position in which said perch projects outwardly from said bird feeder body such that a bird may rest upon said perch (Keefe Fig. 1 and Fig. 2 #29). Although Keefe teaches that element #34 is secured to the wall of the bird feeder, it is capable of being removed especially since applicant has merely claimed "for use" language and thus the element is capable of being removed, e.g. it could be broken off. However for the purpose of argument, Keefe is silent on implicitly teachings that the locator and perch assembly are removable. Yet, making and known element separable is merely an obvious design choice for one of ordinary skill in the art, it would have been obvious to one of ordinary skill in the art to modify the teachings of Keefe at the time of the invention for the advantage of ease of cleaning or storing the device and does not present a patentably distinct limitation [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)].

Regarding Claim 2, Keefe as modified teaches the perch pivots about an axis that, in use, is either substantially parallel to or tangential to the outer surface of said bird feeder body (Keefe #13 and #32).

Regarding Claim 3, Keefe as modified teaches the pivoting means comprises a recess in said locating member and an engaging shaft attached to or integral with said perch (Keefe #32 and 34).

Regarding Claim 4, Keefe as modified is silent on the recess in the locating member is U-shaped. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Keefe at the time of the invention since the

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modification is merely a change in size for ease of inserting the shaft and does not present a patentably distinct limitation.

Regarding Claim 5, Keefe as modified teaches in moving from retracted position to extended position said perch pivots through angle of at least 80 degrees (Keefe Fig. 2 #29).

Regarding Claim 6, Keefe as modified teaches the perch comprises a restraining portion that is displaced some distance outward from the axis about which said perch may pivot such that when said perch is in the fully extended position said restraining portion abuts against a stop member that is integral with or attached to said locating member (Keefe #38).

Regarding Claim 7, Keefe as modified teaches the perch comprises at least two elongate members that extend in mutually orthogonal directions (Fig. 3 #29, there are 4 element #29 that are at least two elongated members that are orthogonal relative to each other).

Regarding Claims 8 and 9, Keefe as modified is silent on the perch being ring-shaped and where said pivoting means comprises a pivot at the periphery of said ring or the perch being U-shaped and said pivoting means comprises a pivot at each free end of said perch. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Keefe at the time of the invention since the modification is merely a change in shape of an element performing the same intended function merely modified to enhance the ergonomic features of the design for the birds.

Regarding Claim 10, Keefe as modified teaches the pivoting means comprises a plurality of recesses in said locating member (Fig. 3 #34 the apertures that receive element #32).

Claims 1-7, 9, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EP 0104766 to Hegedus et al.

Regarding Claim 1, Hegedus teaches a perch assembly for removable attachment to a bird feeder, said assembly comprising a locating (Hegedus Fig. 8 the element that contains element #39) member for locating and removably engaging a body of the bird feeder (Hegedus Fig. 8), a perch (Hegedus #123) and pivoting means (Hegedus #39), for allowing the perch to pivot relative to said locating member, such that in use said locating member may engage a bird feeder body and when so engaged said perch may pivot, from a retracted position in which said perch is substantially flush with said bird feeder body, to an extended position in which said perch projects outwardly from said bird feeder body such that a bird may rest upon said perch (Hegedus Fig. 6 and 7).

Although Hegedus teaches that locating element is secured to the wall of the bird feeder it is capable of being removed especially since applicant has merely claimed "for use" language and thus the element is capable of being removed, e.g. it could be broken off. However for the purpose of argument, Hegedus is silent on implicitly teachings that the locator and perch assembly are removable. Yet, making and known element separable is merely an obvious design choice for one of ordinary skill in the art,

it would have been obvious to one of ordinary skill in the art to modify the teachings of Hegedus at the time of the invention for the advantage of ease of cleaning or storing the device and does not present a patentably distinct limitation [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)].

Regarding Claim 2, Hegedus as modified teaches the perch pivots about an axis that, in use, is either substantially parallel to or tangential to the outer surface of said bird feeder body (Hegedus Fig. 4 and 1).

Regarding Claim 3, Hegedus as modified teaches the pivoting means comprises a recess in said locating member and an engaging shaft attached to or integral with said perch (Hegedus Fig. 8 #39).

Regarding Claim 5, Hegedus as modified teaches in moving from retracted position to extended position said perch pivots through angle of at least 80 (Hegedus Fig. 1 #123).

Regarding Claim 4, Hegedus as modified is silent on the recess in the locating member is U-shaped. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Hegedus at the time of the invention since the modification is merely a change in size for ease of inserting the shaft and does not present a patentably distinct limitation.

Regarding Claim 6, Hegedus as modified teaches a restraining portion that is displaced some distance outward from the axis about which said perch may pivot such that when said perch is in the fully extended position said restraining portion abuts

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against a stop member that is integral with or attached to said locating member (Hegedus #126 and 128).

Regarding Claim 7, Hegedus as modified teaches a perch comprises at least two elongate members that extend in mutually orthogonal directions (Hegedus Fig. 7 #37, there are 4 element #29 that are at least two elongated members that are orthogonal relative to each other).

Regarding Claim 9, Hegedus teaches an assembly that the perch is U-shaped and said pivoting means comprises a pivot at each free end of said perch (Hegedus Fig. 3 #122).

Regarding Claim 10, Hegedus as modified teaches pivoting means comprises a plurality of recesses in said locating member (Hegedus Fig. 7 #37 apertures that receive the shaft).

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,881,491 to Brown.

Regarding Claims 8 and 9, Brown is silent on the perch being ring-shaped and where said pivoting means comprises a pivot at the periphery of said ring or the perch being U-shaped and said pivoting means comprises a pivot at each free end of said perch. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Brown at the time of the invention since the modification is merely a change in shape of an element performing the same intended function merely modified to enhance the ergonomic features of the design for the birds.

Response to Arguments

Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

Claims 11 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

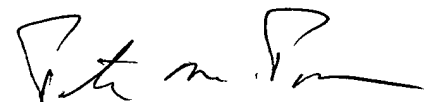
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

17 June 2005


Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600